

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 630 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HARIJAN BECHARBHAI VALLABHBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MUKTESH V PATEL for Petitioner

MR KG SHETH, Learned APP for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/09/2000

C.A.V. JUDGEMENT

1. The petitioner has preferred this petition under Articles 14, 19, 21, and 226 of the Constitution of India for setting aside order dated 4.7.2000 passed in Appeal No. 97 of 2000 under Section 60 of the Bombay Police Act

(for short "the said Act") by the second respondent confirming the judgement and order dated 28.3.2000 in Externment Case No. 21 of 1999 passed by the first respondent under Section 56 of the said Act directing the petitioner to furnish solvent surety in a sum of Rs. 15,000/- for showing good behavior for a period of 2 years from the date of the order.

2. The petitioner was served with show cause notice dated 31.12.1999 under Section 59 of the said Act to show cause as to why he may not be externed out from the area indicated in the notice for a period of 2 years. In the notice it was also stated that the petitioner was a head strong person. That he was in the habit of filing false applications against different persons. That he used to set quarrel with so many persons. That he used to abuse so many persons. That he used to beat the persons coming in his way. Some incidents were cited to show that the petitioner was a head strong person and therefore he was involved in certain offences indicated in the notice. The Externing Authority therefore found that this was a fit case in which the petitioner should be externed out from the area indicated in the notice. Therefore, the said notice was issued. After hearing the matter, learned Sub Divisional Magistrate, Dhangadra was pleased to pass order that instead of externing the petitioner out of the limits of area indicated in the notice, with a view of provide an opportunity to improve and considering the age of the petitioner, he should furnish solvent surety in sum of Rs. 15,000/- as aforesaid.

3. The petitioner carried the matter in appeal and there also he did not succeed. The order in appeal is dated 4.7.2000. Feeling aggrieved with the said judgements and orders of the said two authorities the petitioner has preferred this petition before this Court. It has been contended here that the orders of the respondent are unjust, illegal and improper and against the principles of natural justice. That the respondent failed to appreciate evidence on record and arguments of the learned advocate for the petitioner. That the respondent failed to see that due to political enmity with one minister, the petitioner and his family members are being harassed. That the respondent did not take necessary action of externment against high handed persons of Surendranagr District and took illegal action against the petitioner. That the externment notice is illegal and the petitioner has never committed such offences mentioned in the notice. The respondent no.1 belongs to Prajapati community, the petitioner fights against the illegal activities of other persons and,

therefore, he and his family members are being harassed. That the respondent failed to see that it is an abuse of process of law. That the respondents have not acted with good faith.

4. On the aforesaid aspects, it has been contended that the orders of the aforesaid two authorities are illegal and, therefore, it has been submitted that the petition be allowed and aforesaid orders be quashed and set aside. It is further submitted that strictures against the respondents for making misuse of their powers be passed. That there is further prayer for direction that the action may not be taken under Section 56 and 57 of the said Act and to stop the political exercise of powers and to misuse of the Section 56 and 57 of the said Act.

5. On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appeared for the respondents. I have heard learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has argued at length that the orders of respondents are illegal. He has also submitted that the petitioner has examined as many as 13 witnesses at the inquiry and their evidence has not been considered by the said two authorities to any extent and, therefore, there is non application of mind while passing the aforesaid order of externment against the petitioner. On going through the orders of the learned Sub Divisional Magistrate, Dhangadra at page-11 we can find that he has observed the material as follows :

(i) That the authority has considered the allegations made in the show cause notice and evidence produced by the defence witnesses.

(ii) He has considered the evidence with respect to the allegations and also considered the arguments and evidence of the defence witnesses examined by the petitioner.

Now, this is not sufficient. There is no mention as to who were the witnesses examined by the petitioner. It is not mentioned as to what they have deposed. It is not mentioned as to whether the depositions of those witnesses were acceptable or not. It is not shown as to whether the learned Sub Divisional Magistrate, Dhangadra

has relied upon the said depositions or he did not rely upon the said depositions. Then he has not said as to why these witnesses may be believed or they may be disbelieved. In fact, there is a simple reference that the witnesses were there and their evidence was considered. This is not sufficient. The authority should have considered the evidence objectively. If the evidence of the witnesses was not accepted then at least brief of reasons could be given in the order. This would indicate application of mind. Mere reference to witnesses and then to say that the evidence has been considered that would not be sufficient and would not amount to application of mind.

7. In that view of the matter I am of the view that the learned Sub Divisional Magistrate, Dhagandra does not appear to have applied his mind to the material placed before him including the material in the shape of evidence of 13 witnesses examined by the petitioner. Then so far the other grounds are considered, the notice discloses as many as 14 events against the petitioner, non of them has been referred in the order at page-11. The notice also shows that as many as three offences were recorded against the petitioner at Bajana Police Station being Crime Register Nos. 37 of 1993, 78 of 1997 and 136 of 1999. The same are related to offences punishable under Section 408, 323, 430 of the Indian Penal Code etc. The offences as aforesaid are said to have been committed on 22.6.1992, 27.11.1997 and 15.1.1999. All these events and all these offences are totally absent in the order dated 28.3.2000 placed at page-11. Therefore, it is not clear as to whether the aforesaid 14 events including three criminal cases were actually considered by the learned Sub Divisional Magistrate, Dhangadra or not. It has also not been clear as to whether he accepted all those 14 events or he relied upon the said events stated in the notice. In fact, the order does not indicate as to the basis on which the said order was passed by the said authority. This would again amount to non-application of mind. In the aforesaid view of the matter, I am of the view that the order passed by the learned Sub Divisional Magistrate, Dhangadra dated 28.3.2000 page-11 suffers from the aforesaid infirmity of non-application of mind.

8. Now, so far the Appellate Authority is concerned, his order is placed at page-9 in which it was contended before him that the witnesses produced by the present petitioner were not properly examined and those who were examined their evidence was not considered. Now, this aspect has not been considered by the Appellate Authority

to any extent. Even otherwise, it is a matter of record that evidence of 13 witnesses examined has been referred in the order of the Appellate Authority also. No reason has been given as to why the depositions of those 13 witnesses should be rejected. Therefore, even the order of the Appellate Authority has to be treated to be suffering from non-application of mind. It has also been contended that the Appellate Authority has shown that the petitioner was holding 500 vigha land and that is a wrong statement. After all, this is a matter of arguments advanced before the said authority and we do not have material to show as to what was argued before the said authority. Therefore, it cannot be said that the said authority has given wrong figure of 500 vigha land. It has also been contended that the petitioner had prayed for examination of other witnesses and that prayer was turned down since the petitioner's other witnesses were examined. It has also been contended that he has made other allegations against other persons which is at page -18. Now, this appears to have been addressed to the Government and it was for the Government to consider and decide the said complaint of the petitioner. This complaint does not appear to have been placed before the said two authorities. Learned advocate for the petitioner has also relied upon a paper cutting page-17, which cannot be treated to be an evidence and therefore, it cannot be considered for any purpose by this Court. In the aforesaid view of the matter, I am of the view that since the aforesaid orders suffer from the aforesaid infirmity of non-application of mind, the order passed against the petitioner cannot be sustained and, therefore, the said orders are required to be quashed and set aside.

9. On this aspect the learned advocate for the petitioner has submitted that court should pass stricture against the respondents for making misuse of their powers. It has also been submitted that the action has been taken against the petitioner because of the fact that he made certain allegations against different authorities and against one minister and, therefore, false notice was issued to him and the aforesaid orders have been passed as an out come of the said events. That therefore, court should pass stricture against the respondents. Now, it is very difficult to hold at this stage that the action was taken against the petitioner on account of the aforesaid events alleged by the petitioner. Therefore, in my view no stricture is required to be passed in the present matter. Even otherwise, the Court would normally refrain from in passing strictures against the authorities and this can

be done only when Court finds that it is expedient and necessary in the interest of justice to pass such strcitures. I do not find it necessary to do so in the present case. It is further contended that explanation should be obtained from the authorities for taking action under Sections 56 and 57 of the said Act. Now, here it cannot be said that the case was totally false. The point is that when the authority conducting inquiry does not fulfil the requirement then on technical aspects of the case, the petitioner and other such persons get benefit of technicality of law. Therefore, it cannot be said that the case has been totally got up and fabricated and even otherwise, this Court does not go for entering into calling for explanation against the authorities who take action against different persons under Sections 56 and 57 of the said Act. Therefore, no such explanation is required to be called for. It has been further contended that the some directions should be issued to see that the political power of misuse of Sections 56 and 57 of the said Act is stopped. I do not see that it would be possible for this court to issue any such direction. In fact, when the grounds do not stand for taking action, the action cannot be taken and for that purpose, no direction is required to be issued by this court. Lastly, it has been prayed that the compensation may be awarded to the petitioner. In the present case, the petitioner has not been externed out of the limits of the area indicated in the notice and there has been direction to furnish surety in a sum of Rs. 15,000/-/-. It is true that he must have been required to attend the authority below who conducted proceedings against the petitioner. At the same time, when the case is not found to be totally bogus and false, there is no question of sanctioning compensation to the petitioner. It is more so when the petitioner is being exonerated on aforesaid technical ground of non-application of mind.

10. In the aforesaid view of the matter, the aforesaid orders suffer from aforesaid infirmity of non application of mind by the said two authorities and consequently, the petition is required to be allowed and the orders are required to be quashed and set aside.

11. In the result, this petition is allowed and the order dated 4.7.2000 in Appeal No. 97 of 2000 as well as the order dated 28.3.2000 in Externment Case No. 21 of 1999 passed by respondent no.1 are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.P.Buch, J)

(vipul)